

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

AUG 20 2003

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte DANIEL E. TEDESCO, JAMES A. JORASCH  
and JAY S. WALKER

Application No. 09/100,684

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on August 8, 2003. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On June 3, 2003, an Examiner's Answer was entered (Paper No. 26). On pages 4 and 5, section (9) of the Answer, the examiner relies upon numerous references as prior art of record. However, the examiner cites "Wall Street Access, 'Active Trader Rebate Program'" as prior art. A review of the application reveals that the examiner has not provided a copy of said reference.

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In addition, appellants filed a Reply Brief on August 5, 2003 (Paper No. 28). There is no indication on the record whether the examiner has responded to appellants' Reply Brief. Section 1208.03 of the Manual of Patent Examining Procedure (8th ed., Rev. 1, Feb. 2003) states:

[A]ppellant may file a reply brief as a matter of right within 2 months from the mailing date of the examiner's answer. . . . The primary examiner must then either: (A) acknowledge receipt and entry of the reply brief by using form paragraph 12.47 on form PTOL-90; or (B) reopen prosecution to respond to the reply brief. See MPEP § 1208.02.

Accordingly, it is

ORDERED that the application is returned to the examiner to submit a copy of the reference "Wall Street Access, 'Active Trader Rebate Program,'" to properly respond to appellants' Reply Brief filed on August 5, 2003 (Paper No. 28), or to reopen prosecution, and for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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CRF/clm/dm  
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